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4 Attorney for Plaintiffs
 5 Ying ZHANG
 Da Sheng ZHANG

6 **UNITED STATES DISTRICT COURT**
 7 **NORTHERN DISTRICT OF CALIFORNIA**

8
 9 Ying ZHANG
 Da Sheng ZHANG

10 Plaintiffs
 11 vs.
 12 MICHAEL CHERTOFF, Secretary of the
 Department of Homeland Security;
 13
 14 Defendant.

CV Case No. 0978

**COMPLAINT FOR WRIT IN THE
 NATURE OF MANDAMUS**

“Immigration Case”

15 Plaintiffs Ying ZHANG and Da Sheng ZHANG, by and through their undersigned
 16 attorney, sue Defendant and states as follows:

17 1. This action is brought against the Defendant to compel action on the Petition for
 18 Alien Relative, or Form I-130, filed by Plaintiff, U.S. citizen, on behalf of her alien father, Plaintiff
 19 Da Sheng ZHANG, and on the application to Adjust to Permanent Resident Status, or Form I-485, by
 20 Plaintiff Da Sheng ZHANG, based on Plaintiff Ying ZHANG’s I-130, properly filed by the Plaintiffs.
 21 The I-130 petition and I-485 application remain within the jurisdiction of the Defendant, who has
 22 improperly withheld action on said applications to Plaintiffs’ detriments.

23 **PARTIES**

24 2. Plaintiff Ying ZHANG is citizen of the United States. She filed a Form I-130, Petition for
 25 Alien Relative, on May 17, 2006 with the U.S.C.I.S. on behalf of Plaintiff Da Sheng ZHANG, her
 26 alien father (**Exhibit 1: I-130 Receipt**). Plaintiff Da Sheng ZHANG is a native and citizen of the
 People’s Republic of China. His Form I-485, Application to Register Permanent Resident or
 27 Adjust Status was concurrently filed with his daughter, Plaintiff Ying ZHANG’s Form I-130, also

28
 Case No.:

PLAINTIFFS' ORIGINAL COMPLAINT

F:\LING MIAO\Mandamus\485 Family Based\ZHANG Dasheng & ZHANG Ying\Complaint.wpd

ORIGINAL
 FILED
 FEB 15 2008
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

JW

1 on May 17, 2006 (**Exhibit 2: I-485 Receipt**) and is seeking to become lawful permanent resident
 2 of the United States as beneficiary of the Form I-130 petition filed by Plaintiff Ying ZHANG.

3 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
 4 (DHS), and this action is brought against him in his official capacity. He is generally charged
 5 with enforcement of the Immigration and Nationality Act, and is further authorized to delegate
 6 such powers and authority to subordinate employees of the DHS 8 U.S.C. 1103(a); 8 C.F.R. 2.1.

7 JURISDICTION

8 4. Jurisdiction in this case is proper under 28 USC §§1331 and 1361, 5 USC §701 *et seq.*,
 9 and 28 USC §2201 *et seq.* Relief is requested pursuant to said statutes.

10 VENUE

11 5. Venue is proper in this court, pursuant to 28 USC §1391(e), in that this is an action
 12 against officers and agencies of the United States in their official capacities, brought in the
 13 District where the Plaintiffs reside if no real property is involved in the action.

14 EXHAUSTION OF REMEDIES

15 6. Plaintiffs have exhausted their administrative remedies.

16 CAUSE OF ACTION

17 7. Plaintiff Ying ZHANG is a native and citizen of the United States. She filed a Form I-
 18 130, Petition for Alien Relative, on May 17, 2006 with the U.S.C.I.S. on behalf of Plaintiff Da
 19 Sheng ZHANG, her alien father (**Exhibit 1: I-130 Receipt**). Plaintiff Da Sheng ZHANG is a
 20 native and citizen of the People's Republic of China. His Form I-485, Application to Register
 21 Permanent Resident or Adjust Status was concurrently filed with his daughter, Plaintiff Ying
 22 ZHANG's Form I-130, also on May 17, 2006 (**Exhibit 2: I-485 Receipt**) and is seeking to
 23 become lawful permanent resident of the United States as beneficiary of the Form I-130 petition
 24 filed by Plaintiff Ying ZHANG. Plaintiffs Ying ZHANG and Da Sheng ZHANG also had their
 25 interview on August 15, 2006 at the U.S.C.I.S. San Jose Office (**Exhibit 3: Interview Notice**).

26 8. According to the Service Center processing dates, the USCIS San Jose Office's I-485
 27 processing timeframe is July 19, 2007 (**Exhibit 4: Copy of San Jose CA Processing Dates**
 28 **Posted January 15, 2008**). Plaintiff Irvin Ying ZHANG's I-130 and Plaintiff Da Sheng

1 ZHANG's I-485 application have now remained pending for almost 21 months from the date of
 2 the filing.

3 9. Defendant's refusal to act in this case is, as a matter of law, arbitrary and not in accordance
 4 with the law. Defendant unreasonably has delayed in and has refused to adjudicate Plaintiff Da
 5 Sheng ZHANG's I-485 application for almost 21 months from the date of filing, thereby
 6 depriving them of the rights to the decision on their applications and the peace of mind to which
 7 Plaintiffs are entitled.

8 10. Plaintiffs have been damaged by the failure of Defendant to act in accord with his duties
 9 under the law.

10 (a) Plaintiff Ying ZHANG has been damaged by simply being deprived of the
 11 adjudication of her Form I-130, Petition for Alien Relative, for almost 21 months.

12 (b) Plaintiff Da Sheng ZHANG has been damaged by simply being deprived of the
 13 adjudication of his Application to Adjust to Permanent Resident Status for almost
 14 21 months. Plaintiff has also been unable to plan any foreign travel or pursue a
 15 future course of action in the United States due to the pendency of his I-485
 16 application.

17 (c) Plaintiff Da Sheng ZHANG has been damaged in that his employment
 18 authorization is tied to his status as applicant for permanent residency, and is
 19 limited to increments not to exceed one year. 8 CFR §274a.12(c)(9). Therefore,
 20 Plaintiff has been forced to re-apply and pay for extensions of employment
 21 authorization to the continued inconvenience and harassment of Plaintiff to
 22 continually insure his work eligibility.

23 (d) Plaintiff Da Sheng ZHANG has been further damaged in that his naturalization
 24 application, for which he is eligible to apply five years after he receives his
 25 Permanent Resident status, has now been delayed due to the pendency of his I-485
 26 application.

27 11. The Defendant, in violation of the Administrative Procedures Act and Mandamus Act, 5
 28

1 USC §701 *et seq.*, is unlawfully withholding or unreasonably delaying action on Plaintiff Ying
2 ZHANG's I-130 petition and Plaintiff Da Sheng ZHANG's I-485 application and has failed to
3 carry out the adjudicative functions delegated to him by law with regard to Plaintiffs' cases.

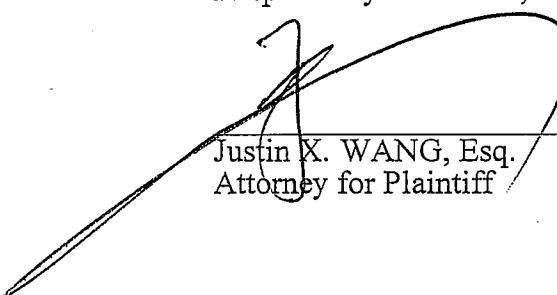
4 **PRAYER**

5 12. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs
6 respectfully pray that the Defendant be cited to appear herein and that, upon due consideration,
7 the Court enter an order:

8 (a) requiring Defendant to expeditiously process Plaintiff's I-485 Application to
9 conclusion;
10 (b) awarding Plaintiffs reasonable attorney's fees under the Equal Access to Justice Act;
11 and
12 (c) granting such other relief at law and in equity as justice may require.

13 Dated: February 14, 2008

14 Respectfully submitted,

15 
16 Justin X. WANG, Esq.
17 Attorney for Plaintiff

CERTIFICATION OF INTERESTED ENTITIES OR PERSON

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Dated: February 14, 2008

Respectfully submitted,

Justin X. WANG, Esq.
Attorney for Plaintiff

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3 **LIST OF ATTACHMENTS**

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| Exhibit | Description |
|----------------|---|
| 1 | I-130 Receipt |
| 2 | I-485 Receipt |
| 3 | Interview Notice |
| 4 | CIS San Jose Processing Dates Posted January 15, 2008 |

Ex. 1

| | | |
|-------------------------------------|----------------|---|
| Receipt Number: MSC-06-231-13018 | | Case Type: I-130 - Petition for Alien Relative |
| Received Date: May 17, 2006 | Priority Date: | Petitioner: ZHANG, YING |
| Notice Date: May 24, 2006 | Page 1 OF 1 | Beneficiary: ZHANG, DA SHENG |

JUSTIN WANG
111 PINE STREET SUITE 1350
SAN FRANCISCO CA 94111

Notice Type: Receipt Notice
Amount Received: \$190.00

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at: www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



Ex.2

| | | | |
|-------------------------------------|----------------|--|-------------------------------|
| Receipt Number: MSC-06-231-13016 | | Case Type: I-485 - Application to Register Permanent Residence or Adjust Status | |
| Received Date: May 17, 2006 | Priority Date: | Applicant: | A096825689 ZHANG, DA SHENG |
| Notice Date: May 24, 2006 | Page 1 OF 1 | ASC Code: | 3 |

JUSTIN WANG
111 PINE ST STE 1350
SAN FRANCISCO CA 94111

Notice Type: Receipt Notice
Amount Received: \$395.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a U.S. Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



Ex-3

| | | | | |
|--|-------------------------------|---|----------------|------------------------------|
| REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW | | | | NOTICE DATE June 26, 2006 |
| CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS | | | | A# A-096 825 689 |
| APPLICATION NUMBER MSC0623113016 | RECEIVED DATE May 17, 2006 | PRIORITY DATE May 17, 2006 | PAGE 1 of 1 | |
| DA SHENG ZHANG c/o JUSTIN X WANG 111 PINE ST STE 1350 SAN FRANCISCO CA 94111 | |  | | |

You are hereby notified to appear for the interview appointment, as scheduled below, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485) and any supporting applications or petitions. Failure to appear for this interview and/or failure to bring the below listed items will result in the denial of your application. (8 CFR 103.2(b)(13))

Who should come with you?

- If your eligibility is based on your marriage, your husband or wife must come with you to the interview.
- If you do not speak English fluently, you should bring an interpreter.
- Your attorney or authorized representative may come with you to the interview.
- If your eligibility is based on a parent/child relationship and the child is a minor, the petitioning parent and the child must appear for the interview.

NOTE: Every adult (over 18 years of age) who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed.

Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.

YOU MUST BRING THE FOLLOWING ITEMS WITH YOU: (Please use as a checklist to prepare for your interview)

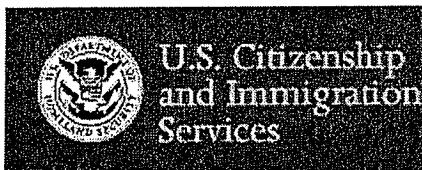
- This Interview Notice and your Government issued photo identification.
- A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted).
- A completed Affidavit(s) of Support (Form I-864) with all required evidence, including the following, for each of your sponsors (unless already submitted):
 - Federal Income Tax returns and W-2's, or certified IRS printouts for the past 3 years;
 - Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months;
 - Evidence of your sponsor's and/or co-sponsor's United States Citizenship or Lawful Permanent Resident status.
- All documentation establishing your eligibility for Lawful Permanent Resident status.
- Any immigration-related documentation ever issued to you, including any Employment Authorization Document (EAD) and any Authorization for Advance Parole (Form I-512).
- All travel documents used to enter the United States, including Passports, Advance Parole documents (I-512) and I-94s (Arrival/Departure Document).
- Your Birth Certificate.
- Your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident Status.
- If you have children, bring a Birth Certificate for each of your children.
- If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:
 - A certified copy of your Marriage Document issued by the appropriate civil authority.
 - Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;
 - If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;
 - Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;
- Supporting evidence of your relationship, such as copies of any documentation regarding joint assets or liabilities you and your spouse may have together. This may include: tax returns, bank statements, insurance documents (car, life, health), property documents (car, house, etc.), rental agreements, utility bills, credit cards, contracts, leases, photos, correspondence and/or any other documents you feel may substantiate your relationship.
- Original and copy of each supporting document that you submitted with your application. Otherwise, we may keep your originals for our records.
- If you have ever been arrested, bring the related Police Report and the original or certified Final Court Disposition for each arrest, even if the charges have been dismissed or expunged. If no court record is available, bring a letter from the court with jurisdiction indicating this.
- A certified English translation for each foreign language document. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate.

YOU MUST APPEAR FOR THIS INTERVIEW: If an emergency, such as your own illness or a close relative's hospitalization, prevents you from appearing, call the U.S. Citizenship and Immigration Services (USCIS) National Customer Service Center at 1-800-375-5283 as soon as possible. Please be advised that rescheduling will delay processing of application/petition, and may require some steps to be repeated. It may also affect your eligibility for other immigration benefits while this application is pending.

If you have questions, please call the USCIS National Customer Service Center at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).

| | |
|--|--|
| PLEASE COME TO: U.S. Citizenship and Immigration Services 1887 MONTEREY ROAD 2ND FLR ROOM 200 SAN JOSE CA 95112 | ON: Tuesday, August 15, 2006 AT: 01:00 PM |
|--|--|

Ex-4


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U.S. Citizenship and Immigration Services

San Jose CA Processing Dates

Posted January 15, 2008

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 16-18 months to process.

We offer a variety of services after you file. For example, for most kinds of cases you can [check the status of your case online](#).

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

[Case Services - How do I... know what kind of services are available to me after I file my application or petition?](#)

District Office Processing Dates for **San Jose CA** Posted January 15, 2008

| Form | Form Name | Processing Timeframe: |
|--------|--|-----------------------|
| I-131 | Application for Travel Documents | October 17, 2007 |
| I-485 | Application to Register Permanent Residence or Adjust Status | July 19, 2007 |
| I-600 | Petition to Classify Orphan as an Immediate Relative | August 03, 2007 |
| I-600A | Application for Advance Processing of Orphan Petition | August 03, 2007 |
| I-765 | Application for Employment Authorization | October 30, 2007 |
| N-400 | Application for Naturalization | April 13, 2007 |

N-600 Application for Certification of Citizenship

January 21, 2007

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